(27,259)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 504.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, PLAINTIFF IN ERROR,

vs.

WALSTEIN G. SMITH.

IN ERROR TO THE DISTRICT COURT, DIVISION No. 1, OF THE TERRITORY OF ALASKA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 14, 1920.

1 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1793 A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

W. G. SMITH, Defendant.

Amended Complaint.

Comes now the above named plaintiff and for cause of action complains and alleges:

I.

That the plaintiff is now and at all times hereinafter mentioned, was, a corporation duly organized and existing under the laws of the State of Oregon, and duly authorized to engage in business in the Territory of Alaska, and that it has paid all of its annual license fees and taxes last due to the said Territory of Alaska;

II.

That the defendant is now and at all times since on or about August 1, 1913, has been the duly appointed, qualified and acting Treasurer for and of the Territory of Alaska;

III.

That plaintiff is engaged in the fishing business and industry, and particularly in the manufacture and production of fish oil, fertilizer and fish meal and by-products from herring fish either in whole or in part, at and in the vicinity of Killisnoo, in said Territory, and it and its predecessors in interest have been so engaged in said business at said place continuously and at all times since the year 1886; that in order to successfully carry on said business and industry plaintiff and its predecessors in interest at all times since 1886 have maintained and constructed, and plaintiff
2 does now maintain a large and valuable plant consisting of docks, warehouses, storehouses, factory, and other appurtenances and buildings at said place; that said business and industry in which plaintiff is so engaged and in which it and its predecessors in interest have been so engaged, is a useful, legitimate and commendable business and industry and is of use and value to the economic, industriel and commercial welfare of the Territory of

Alaska and the United States of America, in that it produces, among other things, fish oil, fish meal, fertilizer, glycerine, salt fish, and by-products, but that said business, is conducted, and it is necessary to conduct said business on a close and narrow margin of profits, and it is impossible to successfully carry on, conduct and maintain said business and industry if said plaintiff be required and compelled to pay unreasonable, prohibitive, confiscatory, excessive, exorbitant, extortionate, oppressive, or discriminatory taxes or licenses;

IV.

That without authority of law and contrary to the Organic Act of the Territory of Alaska, which is the act passed by the Congress of the United States on August 24, 1912, and entitled: "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," and its amendments, the legislature of Alaska did, unlawfully and illegally, enact on May 1, 1913, a certain act entitled: "An Act to establish a system of taxation, creat- revenue, and provide for the collection thereof for the Territory of Alaska, and for other purposes," i. e., Chapter 52, page 107, Alaska Session Laws, 1913, approved May 1, 1913, and did, unlawfully and illegally, enact on April 29, 1915, an act entitled: "An Act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska,
and for other purposes; and to amend an act entitled; 'An
3 Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes,' approved May 1, 1913, and declaring an emergency," i. e., Chapter 76, page 185, Alaska Session Laws, 1915, approved April 29, 1915, and did, unlawfully and illegally enact on May 3, 1917, an act entitled: "An Act to amend sections 1 and 2 of Chapter 76, Laws of Alaska, 1915, entitled: 'An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes, and to amend an act entitled: "An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes," approved May 1, 1913, and declaring an emergency, approved April 29, 1915,'" i. e., Chapter 74, page 201, Alaska Session Laws, 1917, approved May 3, 1917, and that each of said acts so enacted by said legislature is, and at all times has been, invalid, illegal, unconstitutional and void for the following, among other reasons, to-wit: That each of said acts attempts to and does amend, alter and modify the fishing laws of the United States and laws of the United States providing for taxes on business and trade in Alaska, passed by the Congress of the United States, and in force prior to and at the time of the adoption of the said Organic Act; and that each of said acts so enacted by said legislature of Alaska was passed without any authority so to do, and is, and at all times has been, contrary to the provisions of said Organic Act; further, in that inter alia each of said acts attempts to and does levy an annual tax, upon plaintiff's property

in the territory of Alaska, for territorial purposes in excess of one per centum of any valuation that might or could be lawfully fixed, upon plaintiff's said property, as a basis for such assessment thereof, although no provision is made in either or any of said acts
4 for the assessment of the valuation of the plaintiff's property in the Territory of Alaska so levied upon; and further, in that the taxes levied under each of said acts are not uniform upon the same class of subjects and are not levied and collected under general laws, nor are said taxes based upon an assessment according to the actual value of the plaintiff's property upon which the taxes are fixed or levied, and further, in that each of said acts deprives plaintiff and others similarly situated of their property without due process of law, and denies them the equal protection of the laws, and is contrary to the Constitution of the United States and to the Fifth and Fourteenth Amendments thereof; and that said act passed by said legislature in 1917, i. e., Chapter 74, Alaska Session Laws, 1917, is particularly void as to this plaintiff in that it is an act, and the subject and object thereof is to abolish and prohibit fish oil works using herring in whole or in part in the manufacture of fish oil, and fertilizer and fish meal plants manufacturing fertilizer and fish meal in whole or in part from herring, which said subject and object of said act is not in any manner expressed in the title of said act, and in that said act further embraces more than one subject, to-wit: at least three subjects in that it levies license taxes upon certain professions, and taxes upon property, and also prohibits and abolishes fish oil works, using herring in whole or in part in the manufacture of fish oil, and fertilizer and fish meal plants, manufacturing fertilizer and fish meal in whole or in part from herring, and further in that it provides and levies a double taxation by reason of the fact that the plaintiff is annually required, compelled and obliged thereby to pay a tax of $2.00 per barrel on fish oil, manufactured from herring either in whole or in part, and $2.00 per ton on fish meal and fertilizer, manufactured from herring either in whole or in part, in addition to which
5 plaintiff is annually required, obliged and compelled to pay on the same and identical fish oil and fish meal a tax of ten cents per barrel of fish oil and twenty cents per ton of fish meal, under the provisions of Sections 259 and 2569, Compiled Laws of Alaska, with which sections, as well as with Chapter 3, Title VII and Chapter 44, Title XV, of said Compiled Laws of Alaska, plaintiff has at all times fully complied in the payment of the taxes and licenses therein provided at the times and in the manner therein required of it as well as with all other provisions and requirements of said sections and chapters;

V.

That said act so enacted by said legislature of Alaska in 1917, i. e. Chapter 74, Alaska Session Laws, 1917, requires and provides that any person, firm or corporation prosecuting or attempting to prosecute in the Territory of Alaska a fish oil works, using herring in

whole or in part in the manufacture of fish oil, shall annually apply for and obtain a license and pay for said license $2.00 per barrel on the fish oil so produced by it, and that any person, firm or corporation prosecuting or attempting to prosecute in the Territory of Alaska a fertilizer and fish meal plant, manufacturing fertilizer and fish meal in whole or in part from herring, shall annually apply for and obtain a license and pay for said license $2.00 per ton on such fertilizer and fish meal so produced by it, and that by reason thereof it is necessary for plaintiff, and plaintiff is required under said act, if it prosecutes or attempts to prosecute its business and industry in Alaska, to wit, the production of fish oil, fertilizer and fish meal from herring either in whole or in part, to apply for and obtain a license and annually pay for said license the sum of $2.00 per barrel for all fish oil so produced and manufactured by it from herring either in whole or in part, and the sum of $2.00 per ton on all fertilizer and fish meal so produced and manufactured by it
6 from herring either in whole or in part, and that plaintiff does use, and, at all the times in which it and its predecessors in interest have been engaged in said business and industry, it and its predecessors in interest have used, herring either in whole or in part, for the manufacture of the fish oil, fertilizer and fish meal produced, and the by-products manufactured out of such oil and meal by it in its said business and industry; and that it is necessary that it use said herring in said business and industry.

VI.

That said acts of said legislature and particularly that portion of said Chapter 74, Alaska Session Laws 1917, i. e., Section 1, 10th Subsection thereof, levying said license tax upon fish oil, fertilizer and fish meal manufactured from herring either in whole or in part, is unconstitutional and void because, and plaintiff so alleges, although purporting to be enacted solely as revenue measures, they were in truth and in fact enacted solely for the purposes of prohibiting and restraining this plaintiff and all others similarly situated from continuing in the said business and industry, and for the purpose of abolishing and prohibiting said business and that if enforced said objects and purposes will be thereby accomplished and plaintiff's property and business and the property and business of all others similarly situated will be thereby confiscated; and that said acts and particularly said sections thereof imposing said tax on fish oil, fertilizer and fish meal manufactured from herring in whole or in part will not and was not intended to produce any revenue for the reason that said tax is so exorbitant and unreasonable, as to be confiscatory and prohibitive that, if said acts and particularly said sections thereof be annually enforced, it will entirely prohibit plaintiff and all others from engaging in the manufacture of fish oil, fertilizer and fish meal from herring either in whole or in part; and that neither said
7 Chapter 74, Alaska Session Laws, 1917, Chapter 76, Alaska Session Laws, 1915, nor Chapter 52, Alaska Session Laws, 1913, provides any regulation whatsoever for the business of manu-

facturing fish oil, fish meal and fertilizer from herring either in whole or in part, in the Territory of Alaska, and that said tax is greatly in excess of the reasonable and necessary costs of any license or regulation whatsoever that could reasonably be required to be exercised over said business or industry; and that the cost of regulating and supervising, and of issuing licenses for, said business and industry is and would be and has been no greater than that of any of the other businesses or industries for which licenses are provided in said acts, but that plaintiff's said industry is arbitrarily, capriciously and unjustly taxed many times more than, i. e. a percentage many times larger than that levied on any other business in the territory, and that said Territory has, and had, no authority or power under its police power, either implied or otherwise, to impose said tax of $2.00 per barrel on fish oil, manufactured from herring either in whole or in part, or $2.00 per ton on fertilizer and fish meal, manufactured from herring either in whole or in part, as a police or other regulation on said business and industy; and that as a matter of fact no regulation or police supervision whatsoever over said business or industry is required or needed or furnished therefor or thereto by said Territory;

VII.

That said license so attempted to be levied by said Chapter 74, Alaska Session Laws, 1917, is excessive, exorbitant, prohibitive, confiscatory, discriminatory, extortionate, oppressive and unreasonable, and, if plaintiff be required to pay the same during each year that it operates it will be obliged to suspend its operations and cease from the said business and industry in which it and its predecessors in interest have been so engaged for many years, which is the
8 object sought to be attained, under the guise of a revenue measure, by said act; and that said license is, as stated, excessive, exorbitant, extortionate, oppressive, prohibitive, confiscatory, discriminatory and unreasonable in that, as hereinbefore stated, and for the following, among other further reasons, it requires the plaintiff to pay a tax of 9.31 per cent. on the gross receipts obtained by it from the manufacture of fish oil, or 84 per cent. on the net profits therefrom, and 4.60 per cent. on the gross receipts received by it from the manufacture of fish meal and fertilizer or 8.18 per cent. on the net profits obtained therefrom, whereas the greatest or highest license tax required of any other industry licensed under said acts or any of them, whose output or products is taxed on an attempted similar basis is as follows: that is to say, said Chapter 74, Alaska Session Laws, 1917, provides that electric light and power plants selling light, power and steam for heat and supplies to the public shall pay a tax of 0.5 per cent. of the gross receipts in excess of $2,500.00 from light, power and steam sold, and 0.5 per cent. of the net profit from supplies sold; that cold storage plants shall pay a tax, depending on their business, ranging from 0.25 per cent. to 0.5 per cent.; that laundries shall pay a tax, depending on their business, ranging from 0.25 per cent. to 0.75 per cent; that meat markets shall pay a tax depending on their business, ranging from 0.13 per cent. to 0.25 per

cent; that mining shall pay a tax of one per cent. of the net income in excess of $5,000.00; that telephone companies shall pay a tax of 0.5 per cent. of the gross receipts in excess of $1,500.00; that water works, selling water or power to the public, shall pay a tax of 0.5 per cent. of the gross receipts in excess of $2,500.00; that salteries, except herring, shall pay a tax of $.025 per one hundred
9 pounds on all fish salted or mild-cured, and that during the year 1917 the selling price of salt fish and mild-cured fish was as follows: $19.00 per 200-lb. barrel, making a tax of 0.26 per cent; that salmon canneries shall pay a tax of $.045 per case on kings, and reds or sockeyes, $.025 per case on medium reds, and $.02 per case on all others; that the prices for salmon, per case, during the year 1917 were as follows:

Per cs.	4 dz. Chinook salmon,	tall,	@	$2.90	dz.	$11.60	tax	4½¢ 0.388%
"	" 4 dz. Sockeye	"	"	@ 2.90	"	11.60	"	4½¢ 0.388%
"	" 4 dz. Alaska Red	"	"	@ 2.35	"	9.40	"	4½¢ 0.478%
"	" 4 dz. Medium Red	"	"	@ 2.00	"	8.00	"	2½¢ 0.313%
"	" 4 dz. Alaska King	"	"	@ 2.25	"	9.00	"	4½¢ 6.500%
"	" 4 dz. Pink	"	"	@ 1.65	"	6.60	"	2¢ 0.303%
"	" 4 dz. Chum	"	"	@ 1.60	"	6.40	"	2¢ 0.328%

the tax ranging from 0.303 per cent. to 0.5 per cent., but averaging a tax of 0.385 per cent. on the industry of canning salmon; whereas during the year 1917 the selling price of fish oil, made from herring in whole or in part, was $21.53 per barrel, which under said act is taxed $2.00 per barrel or 9.31 per cent. on the gross receipts and 84 per cent. on the net profits, and the selling price of fertilizer and fish meal made in whole or in part from herring, for the year 1917, was $43.41 per ton, which was taxed $2.00 per ton under said act, or a tax of 4.6 per cent. on the gross receipts and 8.18 per cent. on the net profits; and that although there are other persons and corporations in the said territory who are engaged in the manufacture of fish oil, fish meal and fertilizer from fish, inasmuch as they do not use herring either in whole or in part, no license or other tax whatsoever is assessed against or levied upon them by the territory of Alaska, and that the said business of said other persons and corporations is in all essentials the same as the business of this plaintiff and there are no existing distinctions that differentiate the said business of plaintiff from said business of said other persons and corporations; and that the levying of a license tax on plaintiff's
10 said business, without levying a similar tax on the manufacture of fish oil, fish meal and fertilizer from fish, other than from herring either in whole or in part, is unreasonable, purely arbitrary, discriminatory and for the purpose of compelling plaintiff to cease its said business and industry, and of prohibiting and destroying plaintiff's said business and industry; and that neither plaintiff, which has been engaged in said business and industry for many years, nor any other person, firm or corporation, can or could continue to remain in said business and industry and continue to carry on said manufacture of fish oil, fish meal and fer-

tilizer from herring either in whole or in part, and pay, as required and compelled by said acts, such excessive, exorbitant, extortionate, oppressive, prohibitive, discriminatory and unreasonable tax, and, as hereinbefore stated, if it be required to pay said tax each year, plaintiff will be obliged to suspend its operations and cease from said business and industry;

VIII.

That plaintiff, in order to successfully carry on its said business, is obliged at the commencement of each fishing season to obtain credit upon the pack and product which it expects and intends to put up and manufacture during the season, and it is and has been long prior to the passage of said acts, plaintiff's custom, and it is necessary for plaintiff, to obtain credit for that purpose at the beginning of each operating season, and in order to obtain and maintain such credit and successfully finance plaintiff's business and said pack and output it is necessary and requisite that plaintiff's plant and said pack and output be kept free and clear from all mortgages, liens, and other incumbrances but that Section 5 of said Chapter 76,
Alaska Session Laws, 1915, provides that all taxes levied or
11 laid or provided for in said Acts, and penalties, fines and interest accrued, are made and declared to be a lien upon the real and personal property of the person, firm or corporation, including plaintiff, liable therefor, paramount and superior to all mortgages, hypothecations, conveyances and assignments and that said Section 5 was not repealed or modified by said Chapter 74, Alaska Session Laws, 1917, but remains in full force and effect, and that said acts of themselves operated as duress upon this plaintiff and obliged and compelled this plaintiff to pay, as hereinafter stated, said license tax of $2.00 per barrel of fish oil manufactured by it from herring in whole or in part, and of $2.00 per ton on fish meal and fertilizer manufactured by it from herring in whole or in part, so levied by said Chapter 74, Alaska Session Laws, 1917, in order that it might continue and remain in business and keep its real and personal property free from the liens provided for by said acts; and if plaintiff had not paid said license taxes, the amount thereof, together with large and unreasonable and excessive penalties, fines and interest, as hereinafter referred to, would under said acts of the said legislature of Alaska, have become a lien upon all real and personal property of plaintiff situate in Alaska, paramount and superior to all mortgages, hypothecations, conveyances and assignments, and that plaintiff would thereby have been prevented from continuing its business and industry and would have had to cease the same, as it could not have obtained credit for and financed its business in the face of such lien and liens.

IX.

That in addition to providing for said licenses to be paid by this plaintiff as aforesaid, said Chapter 76, Alaska Session Laws, 1915,

and said Chapter 74, Alaska Session Laws, 1917, provide
12 that in addition to a civil remedy, any person, firm or corporation, including plaintiff, violating any of the provisions of said acts shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of the amount of the tax with ten per cent. added, for which such person, firm or corporation, is liable, and that each month or fraction of a month in which business, including plaintiff's said business, is carried on in violation of the said acts shall be deemed a separate offense and prosecution therefor may be by information filed by the Attorney General or other authorized legal counsel of the Territory in any court of competent jurisdiction, and upon conviction the court shall enter a judgment for the fine and costs incurred, and such judgment may be enforced as judgments in civil action or by imprisonment at the rate of one day for each $2.00 for such fine and costs; and that said section of said acts and its and their provisions, do and did operate as duress upon plaintiff, and compelled and required it to pay, as hereinafter stated, said license tax of $2.00 per barrel of fish oil manufactured by it from herring in whole or in part, and $2.00 per ton of fish meal and fertilizer manufactured by it from herring in whole or in part, in that, if it had failed to pay the same, it would have been guilty of a misdemeanor and punished by a fine of the amount of the tax with ten per cent. added, and for each month or fraction of a month in which it carried on its said business it would have been guilty of a separate offense and subjected to like fines and penalties therefor, and would not lawfully have been permitted to continue to carry on, conduct and maintain its said business and industry, and that it could not in the face of said provisions carry on its said business without being at all times subjected to becoming financially
wrecked and bankrupt in the payment of said fines and penal-
13 ties which it would have incurred if it had failed to pay said license; and which, with said interest, fines and penalties, would have become a lien paramount and superior to all other liens, upon all its real and personal property in the Territory of Alaska; and that said acts, and said fines and penalties therein provided for violations thereof, are so severe and drastic that plaintiff did not dare fail or refuse to pay them pending such time as would be required to have said acts declared invalid.

X.

That heretofore, to-wit, on or about November 14, 1917, the defendant, and on January 12, 1918, the Territory of Alaska, by its Attorney General, unlawfully and illegally demanded of and required plaintiff to pay said tax on its output for the year 1917, and on January 14, 1918, plaintiff, by reason of said force and duress so exercised upon it by defendant, and by said Territory of Alaska, and by said acts and laws of said Alaska legislature, made a true return and paid, under protest, to said defendant as Treasurer for Alaska, the license and tax for the year 1917, computed on the true amount of fish oil, fish meal and fertilizer, from herring either in whole or in part, manufactured and packed by it during the year 1917, that is

to say, 4,112 barrels of fis hoil at $2.00 per barrel, amounting to $8,224.00, and 1,037 tons of fish meal at $2.00 per ton amounting to $2,074.00, making a total of $10,298.00, which this plaintiff on said date paid to said defendant as such Treasurer as such license tax, under protest and by reason of said duress so exercised upon it, and that at the time of making said payment plaintiff notified said defendant and the Territory of Alaska, and the Territorial Treasurer for Alaska, and each of them knew and have known at all times herein mentioned that plaintiff regarded and considered, that said acts of said legislature were null, void, unconstitutional and il-
14 legal, and that it was paying and paid said taxes under protest and because of said duress so exercised upon it, and that it would hold said defendant, said Territory and said Territorial Treasurer responsible therefor and for the return and refund thereof, and that plaintiff intended to and would bring suit for the recovery and refunding thereof; that at said time and on January 18, 1918, the said defendant notified plaintiff through its then attorneys, that he would hold said moneys so paid, in a special deposit until said acts of said legislature were tested in the courts;

XI.

That heretofore, to-wit, on September 3, 1918, plaintiff demanded from said defendant that he return said sum of $10,298.00 with interest at the rate of eight per cent. per annum from January 14, 1918, to plaintiff, but that defendant has at all times refused and does still refuse, and has entirely failed, to account for, return or refund said sum, with said interest, to plaintiff, and that neither said sum nor said interest has been refunded to plaintiff or to anyone for its use by said defendant, the Territorial Treasurer for Alaska, or the Territory of Alaska, and that by reason of the foregoing facts defendant is indebted to this plaintiff in the sum of, and this plaintiff is entitled to recover from the defendant, $10,298.00 with interest at the rate of eight per cent. per annum from January 14, 1918.

Wherefore, plaintiff prays judgment against the defendant for the sum of $10,298.00 with interest at the rate of eight per cent. per annum from January 14, 1918, and for its costs and disbursements herein incurred and expended.

R. E. ROBERTSON,
Attorney for Plaintiff.

15 UNITED STATES OF AMERICA,
Territory of Alaska, ss:

R. E. Robertson, being first duly sworn on oath, deposes and says: that he is the attorney and agent of the within named corporate plaintiff; that he has read the foregoing amended complaint and know- the contents thereof and that the same is true he verily believes; that the reason that he makes this verification for and on behalf of said plaintiff corporation is that there are no other officers or agents of said plaintiff corporation now in the District of Alaska, but that all of said officers and agents of said plaintiff corporation

are at this time absent from said District of Alaska; that affiant bases his knowledge as to the facts in said amended complaint upon personal knowledge, and upon information furnished him by officers and agents of said plaintiff corporation.

R. E. ROBERTSON.

Subscribed and sworn to before me this 18th day of February, 1919.

L. L. HARDING,
Notary Public for Alaska.

[NOTARIAL SEAL.]

My commission expires 6/30, 1919.

Copy received this 21st of March, 1919.

GEORGE B. GRIGSBY,
Att'y for Def't.

Filed in the Distrct Court, District of Alaska, First Division, Mar. 22, 1919.

J. W. BELL,
Clerk,
By C. Z. DENNY,
Deputy.

16 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1793-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, Plaintiff,

vs.

W. G. SMITH, Defendant.

Stipulation.

It is hereby stipulated by and between the above parties by their respective counsels that the plaintiff may amend its complaint herein which amended complaint is filed herewith, and that the demurrer heretofore filed by the defendant to the complaint shall be considered as having been filed and being made to said amended complaint.

Dated, Juneau, Alaska, this 21st day of March, 1919.

R. E. ROBERTSON,
Attorney for Plaintiff.
GEORGE B. GRIGSBY,
Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division, Mar. 22, 1919.

J. W. BELL,
Clerk,
By C. Z. DENNY,
Deputy.

17 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1793-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

v.

W. G. SMITH, Defendant.

Demurrer.

Comes now the defendant in the above entitled action and demurs to the complaint of the plaintiff filed herein, on the following grounds:

1. For the reason that the complaint does not state facts sufficient to constitute a *cuase* of action against the defendant.

2. For the reason that there is a defect of parties defendant.

GEORGE B. GRIGSBY,
Attorney General for the Territory of Alaska, Att'y for Defendant.

Receipt of a true and correct copy of the within Demurrer acknowledged this 10th day of February, 1919, and due service admitted thereof.

R. E. ROBERTSON,
Attorney for Plaintiff.

(Endorsed:) No. 1793-A. Original. In the District Court for the Territory of Alaska, Division Number One. Alaska Fish Salting & By-Products Company, a corporation, Plaintiff, v. W. G. Smith, Defendant. Demurrer. George B. Grigsby, Attorney General, Juneau, Alaska.

Filed in the District Court, District of Alaska, First Division, Feb. 10, 1919.

J. W. BELL,
Clerk,
By JOHN T. REED,
Deputy.

18 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1816-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

W. G. SMITH, Defendant.

Complaint.

Comes now the above named plaintiff and for cause of action complains and alleges:

I.

That the plaintiff is now and at all times hereinafter mentioned, was, a corporation duly organized and existing under the laws of the State of Oregon, and duly authorized to engage in business in the Territory of Alaska, and that it has paid all of its annual license fees and taxes last due to the said Territory of Alaska;

II.

That the defendant is now and at all times since on or about August 1, 1913, has been the duly appointed, qualified and acting Treasurer for and of the Territory of Alaska;

III.

That plaintiff is engaged in the fishing business and industry, and particularly in the manufacture and production of fish oil, fertilizer and fish meal and by-products from herring fish either in whole or in part, at and in the vicinity of Killisnoo, in said Territory, and it and its predecessors in interest have been so engaged in said business at said place continuously and at all times since the year 1886; that in order to successfully carry on said business and industry plaintiff and its predecessors in interest at all times since 1886
19 have maintained and constructed, and plaintiff does now maintain a large and valuable plant consisting of docks, warehouses, storehouses, factory, and other appurtenances and buildings at said place; that said business and industry in which plaintiff is so engaged and in which it and its predecessors in interest have been so engaged, is a useful, legitimate and commendable business and industry and is of use and value to the economic, industrial and commercial welfare of the Territory of Alaska and the United States of America, in that it produces, among other things, fish oil, fish meal, fertilizer, glycerine, salt fish, and by-products, but that said business is conducted, and it is necessary to conduct said business, on a close

and narrow margin of profits, and it is impossible to successfully carry on, conduct and maintain said business and industry if said plaintiff be required and compelled to pay unreasonable, prohibitive, confiscatory, excessive, exorbitant, extortionate, oppressive, or discriminatory taxes or licenses;

IV.

That without authority of law and contrary to the Organic Act of the Territory of Alaska, which is the act passed by the Congress of the United States on August 24, 1912, and entitled "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," and its amendments, the legislature of Alaska did, unlawfully and illegally, enact on May 1, 1913, a certain act entitled: "An Act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska, and for other purposes," i. e. Chapter 52, page 107, Alaska Session Laws, 1913, approved May 1, 1913, and did, unlawfully and illegally, enact on April 29, 1915, an act entitled: "An Act to establish a system of taxation, create revenue, and provide for the collection thereof for the Territory of Alaska, and for other purposes; and to amend an act entitled: 'An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes,' approved May 1, 1913, and declaring an emergency," i. e. Chapter 76, page 185, Alaska Session Laws, 1915, approved April 29, 1915, and did, unlawfully and illegally, enact on May 3, 1917, an act entitled: "An Act to amend sections 1 and 2 of Chapter 76, Laws of Alaska, 1915, entitled: 'An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes, and to amend an act entitled: "An Act to establish a system of taxation, create revenue, and provide for collection thereof for the Territory of Alaska, and for other purposes," approved May 1, 1913, and declaring an emergency, approved April 29, 1915,'" i. e. Chapter 74, page 201, Alaska Session Laws, 1917, approved May 3, 1917, and that each of said acts so enacted by said legislature is, and at all times has been, invalid, illegal, unconstitutional and void for the following, among other, reasons, to-wit: That each of said acts attempts to and does amend, alter and modify the fishing laws of the United States and laws of the United States providing for taxes on business and trade in Alaska, passed by the Congress of the United States, and in force prior to and at the time of the adoption of the said Organic Act; and that each of said acts so enacted by said legislature of Alaska was passed without any authority so to do, and is, and at all times has been, contrary to the provisions of said Organic Act; further, in that inter alia each of said acts attempts to and does levy an annual tax, upon plaintiff's property in the territory of Alaska, for territorial purposes in excess of one per centum of any valuation that might or could be lawfully fixed, upon plaintiff's said property, as a basis for such assessment thereof,

although no provision is made in either or any of said acts for the the assessment of the valuation of the plaintiff's property in the Territory of Alaska so levied upon; and further, in that the taxes levied under each of said acts are not uniform upon the same class of subjects and are not levied and collected under general laws, nor are said taxes based upon an assessment according to the actual value of the plaintiff's property upon which the taxes are fixed or levied, and further, in that each of said acts deprives plaintiff and others similarly situated of their property without due process of law, and denies them the equal protection of the laws, and is contrary to the Constitution of the United States and to the Fifth and Fourteenth Amendments thereof; and that said act passed by said legislature in 1917, i. e., Chapter 74, Alaska Session Laws, 1917, is particularly void as to this plaintiff in that it is an act, and the subject and object thereof is to abolish and prohibit fish oil works using herring in whole or in part in the manufacture of fish oil, and fertilizer and fish meal plants manufacturing fertilizer and fish meal in whole or in part from herring, which said subject and object of said act is not in any manner expressed in the title of said act, and in that said act further embraces more than one subject, to-wit, at least three subjects, in that it levies license taxes upon certain professions, and taxes upon property, and also prohibits and abolishes fish oil works, using herring in whole or in part in the manufacture of fish oil, and fertilizer and fish meal plants, manufacturing fertilizer and fish meal in whole or in part from herring, and
22 further, in that it provides and levies a double taxation by reason of the fact that the plaintiff is annually required, compelled and obliged thereby to pay a tax of $2.00 per barrel on fish oil, manufactured from herring either in whole or in part, and $2.00 per ton on fish meal and fertilizer, manufactured from herring either in whole or in part, in addition to which plaintiff is annually required, obliged and compelled to pay on the same and identical fish oil and fish meal a tax of ten cents per barrel of fish oil and twenty cents per ton of fish meal under the provisions of Sections 259 and 2569, Compiled Laws of Alaska, with which sections, as well as with Chapter 3, Title VII and Chapter 44, Title XV, of said Compiled Laws of Alaska, plaintiff has at all times fully complied in the payment of the taxes and licenses therein provided at the times and in the manner therein required of it as well as with all other provisions and requirements of said sections and chapters;

V.

That said act so enacted by said legislature of Alaska in 1917, i. e. Chapter 75, Alaska Session Laws, 1917, requires and provides that any person, firm or corporation prosecuting or attempting to prosecute in the Territary of Alaska a fish oil works, using herring in whole or in part in the manufacture of fish oil, shall annually apply for and obtain a license and pay for said license $2.00 per barrel on the fish oil so produced by it, and that any person, firm or corporation prosecuting or attempting to prosecute in the Territory of

Alaska a fertilizer and fish meal plant, manufacturing fertilizer and fish meal in whole or in part from herring, shall annually apply for and obtain a license and pay for said license $2.00 per ton on such fertilizer and fish meal so produced by it, and that by reason thereof it is necessary for plaintiff, and plaintiff is required
23 under said act, if it prosecutes or attempts to prosecute its business and industry in Alaska, to-wit, the production of fish oil, fertilizer and fish meal from herring either in whole or in part, to apply for and obtain a license and annually pay for said license the sum of $2.00 per barrel for all fish oil so produced and manufactured by it from herring either in whole or in part, and the sum of $2.00 per ton on all fertilizer and fish meal so produced and manufactured by it from herring either in whole or in part, and that plaintiff does use, and, at all times in which it and its predecessors in interest have been engaged in said business and industry, it and its predecessors in interest have used, herring either in whole or in part for the manufacture of the fish oil, fertilizer and fish meal produced, and the by-products manufactured out of such oil and meal by it in its said business and industry; and that it is necessary that it use said herring in said business and industry.

VI.

That said acts of said legislature and particularly that portion of said Chapter 74, Alaska Session Laws 1917, i. e., Section 1, 10th Subsection thereof, levying said license tax upon fish oil, fertilizer and fish meal manufactured from herring either in whole or in part, while ostensibly enacted solely as revenue measures, were in fact enacted for the purposes of prohibiting and restraining, under the guise of a revenue measure, this plaintiff from continuing in its said business and industry, and to abolish plaintiff's said business and to confiscate its property; and that said acts and particularly said sections thereof imposing said tax on fish oil, fertilizer and fish meal manufactured from herring in whole or in part will not produce any revenue for the reason that said tax is so exorbitant, unfair, unreasonable, extortionate, confiscatory and prohibitive that, if said acts and particularly said sections thereof be annually enforced, it will entirely prohibit plaintiff and all others from
24 engaging in the manufacture of fish oil, fertilizer and fish meal from herring either in whole or in part; and that neither said Chapter 74, Alaska Session Laws, 1917, Chapter 76, Alaska Session Laws, 1915, nor Chapter 52, Alaska Session Laws, 1913, provides any regulation whatsoever for the business of manufacturing fish oil, fish meal and fertilizer from herring either in whole or in part, in the Territory of Alaska, and that said tax is greatly in excess of the reasonable and necessary cost of any license or regulation whatsoever that could reasonably be required to be exercised over said business or industry; and that the cost of regulating and supervising, and of issuing licenses for, said business and industry is and would be and has been no greater than that of any of the other businesses or industries for which licenses are provided in said acts,

but that plaintiff's said industry is arbitrarily, capriciously and unjustily taxed many times more than, i. e.: a percentage many times larger than that levied on, any other business in the territory, and that said Territory has, and had, no authority or power under its police power, either implied or otherwise, to impose said tax of $2.00 per barrel on fish oil, manufactured from herring either in whole or in part, or $2.00 per ton on fertilizer and fish meal, manufactured from herring either in whole or in part, as a police or other regulation on said business and industry; and that as a matter of fact no regulation or police supervision whatsoever over said business or industry is required or needed or furnished therefor or thereto by said Territory.

VII.

That said license so attempted to be levied by said Chapter 74, Alaska Session Laws, 1917, is excessive, exorbitant, prohibitive, confiscatory, discriminatory, extortionate, oppressive and unreasonable, and, if plaintiff be required to pay the same during each year that it operates it will be obliged to suspend its operation and cease
25 from the said business and industry in which it and its predecessors in interest have been so engaged for many years, which is the object sought to be attained, under the guise of the revenue measure, by said act; and that said license is, as stated, excessive, exorbitant, extortionate, oppressive, prohibitive, confiscatory, discriminatory and unreasonable in that, as hereinbefore stated, and for the following, among other further reasons it requires the plaintiff to pay a tax of 5.60 per cent. on the gross receipts obtained by it from the manufacture of fish oil, or 113.64 per cent. on the net profits therefrom, and 2.92 per cent. on the gross receipts received by it from the manufacture of fish meal and fertilizer or 28.12 per cent. on the net profits obtained therefrom, whereas the greatest or highest license tax required of any other industry licensed under said acts or any of them, whose output or products is taxed on an attempted similar basis is as follows; that is to say, said Chapter 74, Alaska Session Laws, 1917, provides that electric light and power plants selling light, power and steam for heat and supplies to the public shall pay a tax of 0.5 per cent. of the gross receipts in excess of $2,500.00 from light, power and steam sold, and 0.5 per cent. of the net profit from supplies sold; that cold storage plants shall pay a tax, depending on their business, ranging from 0.25 per cent. to 0.5 per cent.; that laundries shall pay a tax, depending on their business, ranging from 0.25 per cent. to 0.75 per cent.; that meat markets shall pay a tax, depending on their business, ranging from 0.13 per cent. to 0.25 per cent.; that mining shall pay a tax of one per cent. of the net income in excess of $5,000.00; that telephone companies shall pay a tax of 0.5 per cent. of the gross receipts in excess of $1,500.00; that water works, selling water or power to the public, shall pay a tax of 0.5 per cent. of the gross receipts in excess
26 of $2,500.00; that salteries, except herring, shall pay a tax of $.025 per one hundred pounds on all fish salted or mild-cured, and that during the year 1918 the selling price of salt fish and mild-cured fish was as follows: $18.00 per 200-lb. barrel, making a tax of

0.277 per cent; that salmon canneries shall pay a tax of $.045 per case on kings, and reds or sockeyes, $.025 per case on medium reds, and $.02 per case on all others; that the prices for salmon, per case during the year 1918, were as follows:

Per cs.	4	dz.	Chinook Salmon,	tall,	3.15	dz.	$12.60	tax	4½¢ 0.357%
" "	4	"	Sockeye "	"	3.15	"	12.60	"	4½¢ 0.357%
" "	4	"	Alaska Red "	"	2.35	"	9.40	"	4½¢ 0.478%
" "	4	"	Med. Red Alaska	"	2.25	"	9.00	"	2½¢ 0.278%
" "	4	"	Alaska King Sal.	"	3.00	"	12.00	"	4½¢ 0.375%
" "	4	"	Pink Salmon	"	1.65	"	6.60	"	2¢ 0.303%
" "	4	"	Chum Salmon	"	1.60	"	6.40	"	2¢ 0.351%

the tax ranging from 0.303 per cent. to 0.478 per cent., but averaging a tax of 0.351 per cent, on the industry of canning salmon; whereas during the year 1918 the selling price of fish oil, made from herring in whole or in part, was $35.71 per barrel, which under said act is taxed $2.00 per barrel or 5.60 per cent. on the gross receipts and 113.64 per cent. on the net profits, and the selling price of fertilizer and fish meal made in whole or in part from herring, for the year 1918, was $68.46 per ton, which was taxed $2.00 per ton under said act, or a tax of 2.92 per cent. on the gross receipts and 28.12 per cent. on the net profits; and that although there are other persons and corporations in the said territory who are engaged in the manufacture of fish oil, fish meal and fertilizer from fish, inasmuch as they do not use herring either in whole or in part, no license or other tax whatsoever is assessed against or levied upon them by the territory
27 of Alaska, and that the said business of said other persons and corporations is in all essentials the same as the business of this plaintiff and there are no existing distinctions that differentiate the said business of plaintiff from said business of said other persons and corporations; and that the levying of a license tax on plaintiff's said business, without levying a similar tax on the manufacture of fish oil, fish meal and fertilizer from fish, other than from herring either in whole or in part, is unreasonable, purely arbitrary, discriminatory and for the purpose of compelling plaintiff to cease its said business and industry, and of prohibiting and destroying plaintiff's said business and industry; and that neither plaintiff, which has been engaged in said business and industry for many years, nor any other person, firm or corporation, can or could continue to remain in said business and industry and continue to carry on said manufacture of fish oil, fish meal and fertilizer from herring either in whole or in part, and pay, as required and compelled by said acts, such excessive, exorbitant, extortionate, oppressive, prohibitive, discriminatory and unreasonable tax, and, as hereinbefore stated, if it be required to pay said tax each year, plaintiff will be obliged to suspend its operations and cease from said business and industry.

VIII.

That plaintiff, in order to successfully carry on its said business, is obliged at the commencement of each fishing season to obtain credit upon the pack and product which it expects and intends to put up and manufacture during the season, and it is and has been long prior to the passage of said acts, plaintiff's custom, and it is necessary for plaintiff, to obtain credit for that purpose at the beginning of each operating season, and in order to obtain and maintain such credit and successfully finance plaintiff's business and
28 said pack and output it is necessary and requisite that plaintiff's plant and said pack and output be kept free and clear from all mortgages, liens, and other incumbrances but that Section 5 of said Chapter 76, Alaska Session Laws,1915, provides that all taxes levied or laid or provided for in said Acts, and penalties, fines and interest accrued, are made and declared to be a lien upon the real and personal property of the person, firm or corporation, including plaintiff, liable therefor, paramount and superior to all mortgages, hypothecations, conveyances and assignments and that said Section 5 was not repealed or modified by said Chapter 74, Alaska Session Laws, 1917, but remains in full force and effect, and that said acts of themselves operated as duress upon this plaintiff and obliged and compelled this plaintiff to pay, as hereinafter stated, said license tax of $2.00 per barrel of fish oil manufactured by it from herring in whole or in part, and of $2.00 per ton on fish meal and fertilizer manufactured by it from herring in whole or in part, so levied by said Chapter 74, Alaska Session Laws, 1917, in order that it might continue and remain in business and keep its real and personal property free from the liens provided for by said acts; and if plaintiff had not paid said license taxes, the amount thereof, together with large and unreasonable and excessive penalties, fines and interest, as hereinafter referred to, would under said acts of the said legislature of Alaska, have become a lien upon all real and personal property of plaintiff situate in Alaska, paramount and superior to all mortgages, hypothecations, conveyances and assignments, and that plaintiff would thereby have been prevented from continuing its business and industry and would have had to cease the same, as it could not have obtained credit for and financed its business in the face of such lien and liens.

29 IX.

That in addition to providing for said licenses to be paid by this plaintiff as aforesaid, said Chapter 76, Alaska Session Laws, 1915, and said Chapter 74, Alaska Session Laws, 1917, provide that in addition to a civil remedy, any person, firm or corporation, including plaintiff, violating any of the provisions of said act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of the amount of the tax with ten per cent. added, for which such person, firm or corporation, is liable, and that each month or fraction of a month in which business, including plaintiff's said business, is carried on in violation of the said acts shall be

deemed a separate offense and prosecution therefor may be by information filed by the Attorney General or other authorized legal counsel of the Territory in any court of competent jurisdiction, and upon conviction the court shall enter a judgment for the fine and costs incurred, and such judgment may be enforced as judgments in civil action or by imprisonment at the rate of one day for each $2.00 of such fine and costs; and that said section of said act and its and their provisions, do and did operate as duress upon plaintiff, and compelled and required it to pay, as hereinafter stated, said license tax of $2.00 per barrel of fish oil manufactured by it from herring in whole or in part, and $2.00 per ton of fish meal and fertilizer manufactured by it from herring in whole or in part, in that, if it had failed to pay the same, it would have been guilty of a misdemeanor and punished by a fine of the amount of the tax with ten per cent. added, and for each month or fraction of a month in which it carried on its said business it would have been guilty of a separate offense and subjected to like fines and penalties therefor, and would not lawfully have been permitted to continue to carry on, con-
30 duct and maintain its said business and industry, and that it could not in the face of said provisions carry on its said business without being at all times subjected to becoming financially wrecked and bankrupt in the payment of said fines and penalties which it would have incurred if it had failed to pay said license; and which, with said interest, fines and penalties, would have become a lien paramount and superior to all other liens, upon all its real and personal property in the Territory of Alaska; and that said acts, and said fines and penalties therein provided for violations thereof, are so severe and drastic that plaintiff did not dare fail or refuse to pay them pending such time as would be required to have said acts declared invalid.

X.

That heretofore, to wit, on January 15, 1919, by reason of said force and duress so unlawfully and illegally exercised upon it by defendant and by said Territory of Alaska, and by said acts and laws of said Alaska legislature, plaintiff made a true return and paid under protest, to said defendant as Treasurer for Alaska, the license and tax for the year 1918, computed on the true amount of fish oil, fish meal and fertilizer, from herring either in whole or in part, manufactured and packed by it during the year 1918, that is to say, 2,720 barrels of fish oil at $2.00 per barrel, amounting to $5,440.00, and 645 tons of fish meal at $2.00 per ton, amounting to $1,290.00, making a total of $6,730.00, which this plaintiff on said date paid to said defendant, as such Treasurer as such license tax, under protest and by reason of said duress so exercised upon it, and that at the time of making said payment plaintiff notified said defendant and the Territory of Alaska, and the Territorial Treasurer for Alaska, and each of them knew and have known at all times herein men-
tioned that plaintiff regarded and considered, that said acts of
31 said legislature were null, void, unconstitutional and illegal, and that it was paying and paid said taxes under protest and

because of said duress so exercised upon it, and that it would hold said defendant, said Territory of Alaska and said Territorial Treasurer responsible therefor and for the return and refund theeof, and that plaintiff intended to and would bring suit for the recovery and refunding thereof; that at said time and on January 16, 1919, the said defendant notified plaintiff through its then attorney, that he would hold said moneys so paid, in a special deposit until said acts of said legislature were tested in the courts;

XI.

That heretofore, to-wit, on January 23, 1919, plaintiff demanded from said defendant that he return said sum of $6,730.00 with interest at the rate of eight per cent. per annum from January 15, 1919, to plaintiff, but that defendant has at all times refused and does still refuse, and has entirely failed, to account for, return or refund said sum, with said interest, to plaintiff, and that neither said sum nor said interest has been refunded to plaintiff or to anyone for its use by said defendant, the Territorial Treasurer for Alaska, or the Territory of Alaska, and that by reason of the foregoing facts defendant is indebted to this plaintiff in the sum of, and this plaintiff is entitled to recover from the defendant, $6,730.00 with interest at the rate of eight per cent. per annum from January 15, 1919.

Wherefore, plaintiff prays judgment against the defendant for the sum of $6,730.00 with interest at the rate of eight per cent. per annum from January 15, 1919, and for its costs and disbursements herein incurred and expended.

R. E. ROBERTSON,
Attorney for Plaintiff.

32 STATE OF OREGON,
County of Multnomah, ss:

R. Koehler, being first duly sworn on oath, deposes and says: that he is Vice-President of the within named corporate plaintiff and that he makes this verification on its behalf; that he has read the foregoing complaint, and knows the contents thereof, and that the same is true as he verily believes.

R. KOEHLER.

Subscribed and sworn to before me this 30 day of January, 1919.
[SEAL.] M. MUIR,
Notary Public for the County of Multnomah, State of Oregon, Residing in the City of Portland.

My commission expires 8/4, 1919.

Filed in the District Court, District of Alaska, First Division, Feb. 17, 1919.

J. W. BELL,
Clerk,
By JOHN T. REED,
Deputy.

33 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1816-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

v.

W. G. SMITH, Defendant.

Demurrer.

Comes now the defendant named in the above entitled action and demurs to the complaint of the plaintiff filed herein on the following grounds:

(1) That there is a defect of parties defendant;

(2) That the complaint does not state facts sufficient to constitute a cause of action.

GEORGE B. GRIGSBY,
Attorney for Defendant.

The receipt of a true and correct copy of the within Demurrer acknowledged this 17th day of March, 1919.

R. E. ROBERTSON,
Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division, Mar. 19, 1919.

J. W. BELL,
Clerk,
By C. Z. DENNY,
Deputy.

(Endorsed:) Original. No. 1816-A. In the District Court for the District of Alaska, Division Number One, at Juneau, Alaska Fish Salting & By-Products Company, a corporation, Plaintiff vs. W. G. Smith, Defendant. Demurrer. George B. Grigsby, Attorney General, Juneau, Alaska.

34 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1793-A.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation,

vs.

W. G. SMITH.

Hearing on Demurrer to Complaint.

Now at this time the above entitled cause comes on regularly before the Court upon defendant's demurrer to the amended complaint herein; George B. Grigsby, Attorney General, appearing in support of the demurrer, and R. E. Robertson, Esquire, attorney for plaintiff, in opposition thereto.

Thereupon Mr. Grigsby states that he waives the point in his demurrer as to the defect of parties plaintiff, and thereupon, after hearing the argument of Mr. Grigsby, the matter is continued for further argument until Friday morning, March 28, 1919, at 9:30 o'clock.

Wednesday, March 26, 1919.

Court Journal O, Page 462.

JENNINGS, *District Judge.*

35 In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1816-A.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation,

vs.

W. G. SMITH.

Hearing on Demurrer to Complaint.

Now at this time the above entitled cause comes on regularly before the Court upon defendant's demurrer to the complaint herein; George B. Grigsby, Attorney General, appearing in support of the demurrer, and R. E. Robertson, Esquire, attorney for plaintiff, in opposition thereto.

Thereupon Mr. Grigsby states that he waives the point in his demurrer as to the defect of parties plaintiff, and thereupon, after hearing the argument of Mr. Grigsby, the matter is continued for further argument until Friday morning, March 28, 1919, at 9:30 o'clock.

Wednesday, March 26, 1919.

Court Journal O, Page 462.

JENNINGS, *District Judge.*

36 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation,

vs.

W. G. SMITH.

Hearing on Demurrers, etc.

Now at this time the above numbered and entitled cases come on for further hearing before the Court upon demurrers to the complaints filed in said causes. George B. Grigsby, Esquire, attorney General, appears in support of the demurrers and R. E. Robertson, attorney for plaintiff, in opposition thereto.

Thereupon arguments are resumed and continued until tomorrow morning at nine-thirty o'clock A. M.

Friday, March 28, 1919.

JENNINGS,
District Judge.

Court Journal O, Page 467.

37 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A & 1816-A.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation,

vs.

W. G. SMITH.

Continuation of Hearing on Demurrers, etc.

Now at this time argument is resumed by Mr. Grigsby upon the demurrers to the complaints filed in the above entitled and numbered cases, whereupon the matter is taken under advisement; and on consent of respective counsel, the above two cases are consolidated and considered as one case.

Thereupon, on consent of Mr. Grigsby, plaintiff's attorney is given permission to change the defendant's name from W. G. Smith to Walstein G. Smith.

Saturday, March 29, 1919.

JENNINGS,
District Judge.

Court Journal O, Page 468.

38 In the District Court for the District of Alaska, Division No. One, at Juneau.

Nos. 1793-A—1816-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

W. G. SMITH, Defendant.

Ruling on Demurrers to Complaints.

R. E. Robertson, for plaintiff;
George B. Grigsby, Attorney General, for defendant.

Delivered June 7, 1919.

Filed in the District Court, District of Alaska, First Division, Jun. 7, 1919.

J. W. BELL,
Clerk.

39 JENNINGS, *Judge:*

The gist of the complaints in these cases is:

(1) That plaintiff is, and since 1886 has been, engaged in the business of the manufacture and production of fish oil, fertilizer, fish meal and by-products from herring fish in whole and in part, and has a valuable plant for that purpose; and that said business is useful, legitimate and commendable, but that it is necessary that the same should be conducted on a small margin of profit.

(2) That the Legislature enacted the following Acts, to-wit: Act of May 1, 1913, Session Laws of 1913, Chapter 52, page 107; Act of April 29, 1915, Session Laws 1915, Chapter 76, page 185; Act of May 3, 1917, Session Laws 1917, Chapter 74, page 185; all of which said Acts levy license taxes on the business of fisheries, etc.: That said Acts are void because they amend, alter and modify the fishing laws of the United States, and because they levy an annual tax in excess of one per cent valuation, and because the said taxes are not uniform and are not levied under general laws nor based upon assessment according to actual value of property, and because said Acts deprive the plaintiffs of their property without due process of law, and so are contrary to the 5th and 14th amendments.

The Act of 1917 is said to be void because in addition to the foregoing alleged reasons its object and purpose is "To abolish and prohibit fish oil works using herring in whole or in part" and that object is not expressed in the title, and because the penalty for non-payment of the taxes levied is so severe that the plaintiff would, if the Act be sustained, be financially ruined.

(3) That plaintiff has paid the taxes levied for the years 1917-18 respectively, under duress and protest.

The prayers are that the taxes so paid may be recovered.

The complaints are alike in their essential averments although differing as to the allegations concerning the gross output and net profits of the business for the years 1917-1918, and as to the amounts sought to be recovered.

40 Defendant demurred to the complaint on the grounds that there was a defect of parties and that the complaint did not state facts sufficient to constitute a cause of action. At the argument on the demurrer the objection that there was a defect of parties was expressly waived, as was also any contention that the complaint was insufficient in its allegations of duress or in any particular other than in its allegations as to the unconstitutionality of the tax; so that the only question before the Court at this time is this: Does the complaint state facts sufficient to show that the tax is unconstitutional?

(1) It is assigned and argued that the Acts of 1913-15-17, supra, contravene the Organic Act because, as alleged,

(*a*) They amend, alter and modify the fishing laws of the United States.

The basis for this contention is not apparent. The law of the United States imposing a tax of ten cents per barrel on fish oil works and twenty cents per ton on fertilizer works (section 2569 C. L. Alaska 1913) cannot be said to be a fishing law of the United States,—it is a "tax on the pursuit of a certain line of business." The Territorial statutes in question provide for a license tax, not on fishing, but, on the pursuit of a certain line of business. So far as these statutes are concerned, one may catch and sell all the herring one chooses without liability to pay a tax.

(*b*) Because the Acts levy an annual tax in excess of one per cent valuation; and

(*c*) Because the taxes are not uniform nor under general laws, nor based upon assessment of actual valution. Objections analogous to (*b*) and (*c*) were fully passed upon in the case of the Territory v. Alaska Pacific Fisheries, 5 Alaska, 325, affirmed in 236 Fed. 61. That decision was adverse to plaintiff's contention.

41 (2) The Act of 1917 is further attacked,

(*d*) Because its object and purpose is to abolish and prohibit fish oil works using herring in whole or in part, and that object is not expressed in the title.

The constitutional inhibition is as follows: "No law shall embrace more than one subject, which shall be expressed in its title." (Organic Act, section 8.)

The title of the Act in question is "An Act to amend sections 1 and 2 of Chapter 76, laws of Alaska 1915, entitled 'An act to establish a system of taxation, create revenue, etc.'"

I cannot see that the act in question does anything more than that

which by its title it purposes to do—that is, amend the former act; this amendment is to the effect that taxes are increased on some industries, and some industries (fish oil works among the number) theretofore untaxed are made the subject of taxation.

(*e*) Because "it levies double taxation, to-wit: $2 per barrel on fish oil manufactured from herring, and $2 per ton on fish meal and fertilizer manufactured from herring, while at the same time defendant must pay 10 cents per barrel on fish oil, and 20 cents per ton on fish meal, under sections 259 and 2569 C. L. 1913."

In the case above referred to, to-wit: Territory v. Alaska Pacific Fisheries, 5 Alaska 325, 236 Fed. 52, a like contention was made and was decided adversely, the upper court saying:

"And thus by the Organic Act those general provisions for the protection of the fish which we find in the act of 1906 were kept in force without possibility of alteration, amendment, or repeal by the territorial Legislature, and the specific license tax provided by the act of 1906 was kept in force, but with power transferred to the Legislature to impose, if it should see fit, other and additional license taxes."

42 Other contentions which will be here noticed are

That the Act is confiscatory in that in 1917 the tax amounted to 5.6% of gross receipts, and 113.64% of the net profits, obtained by plaintiff from the manufacture of fish oil; and 2.92% of gross receipts, and 28.12% of net profits, obtained by plaintiff from the manufacture of fish meal and fertilizer; and that

in 1918 the tax on gross and net receipts, respectively, on the above items, respectively, amounted to the following, to-wit: 9.31, 84, 4.5, 8.18.

A tax of ten per cent on gross output is not confiscatory; and the "net profits" is necessarily a question of economy and efficiency of method.

That the penalty for non-payment of the tax is severe as to prohibit a testing of a tax in a court of law.

It will be time enough to determine that question when some attempt is made to collect the penalty. (Flint v. Stone, 220 U. S. 177). Ex-parte Young, 209 U. S. 123, and Cotting v. K. C. Stock Yards, 183 U. S. 79, cited by plaintiff do not apply to a case like this. (Rast v. Van Deman, 240 U. S. 357.)

That the Act is not a revenue measure.

It purports to be a revenue measure, and it levies a tax on a taxable res and the tax is demanded for a lawful public purpose. Moreover, it is alleged in the complaint that said tax was levied * * * "but solely for the purpose of raising revenue and as a revenue measure, and for the further purpose," etc. (Complaint, par. VI.)

That the tax is discriminatory.

The tax bears equally upon all persons engaged in the line of business which is taxed.

43 The main contention of plaintiff is that the Act of 1917 is in contravention of the 5th and 14th Amendments of the

Constitution, in that it results in, and was intended to result in, the deprivation of property without due process of law; that the manufacture of fish oil from other fish than herring is not taxed at all, and that "there are no existing distinctions which differentiate the business of plaintiff from the business of making fish oil out of other fishes than herring"; and that the singling out of plaintiff's business was for the purpose of destroying that business, etc.

By the demurrant the Court is cited to the case of McCray v. United States, 105 U. S. (the oleomargarine case), which reiterates the oft-repeated assertion that "the power to tax is the power to destroy", and the equally frequent assertion that once it be conceded that the taxing power has been exercised, no court can inquire into the motives and purposes of the legislature in enacting the legislation. The Justice who wrote the opinion has this to say in Brushaber v. Union Pac. R. R. 241 U. S., 1-24:

"So far as the due process clause of the Fifth Amendment is relied upon, it suffices to say that there is no basis for such reliance since it is equally settled that such clause is not a limitation upon the taxing power conferred upon Congress by the Constitution; in other words, that the Constitution does not conflict with itself by conferring upon the one hand a taxing power and taking the same power away on the other by the limitations of the due process clause. * * * And no change in the situation here would arise even if it be conceded, as we think it must be, that this doctrine would have no application in a case where although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property—that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

The opinion in the McCray case is an exhaustive review of authorities, but I cannot see that it is very definite as to what is a proper test by which can be determined the question as to whether
44 an Act purporting to be a Revenue Act is really and truly a Revenue Act or an Act of Confiscation under the guise of a Revenue Act, unless it be that the whole matter turns on the question as to the "reasonableness" of the classification. If the question cannot be determined by a consideration of the motives and purposes of the individual legislators (and it seems that it cannot—McCray v. U. S. supra, page 61, second paragraph—nor by a consideration of the fact that the tax is oppressive or prohibitive (Ibid, page 60), what is there left by which it may be determined? And yet "one is in danger of losing himself in the terms reasonable and arbitrary." (148 Fed. 525.

In view of the almost omnipotent character of the taxing power one is impelled (by a process of elimination) to the conclusion that when there is no distinction made between members of a class the decisive test lies in the presence or absence of a sufficient basis for classification. That being so, the question in the case at bar is not

difficult of solution, when it is considered how strong a case must be made before a court will declare an Act of the Legislature to be unconstitutional.

Classification.

As throwing a side light on what is not a proper basis for classification, reference might be made to this language of Mr. Justice Brown, in American Sugar Refining Co. v. Louisiana, 179 U. S. 89-92, to-wit:

"Of course, if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers, such exemption would be pure favoritism, and a denial of the equal protection of the laws to the less favored classes;"

but here again a question is left open by the words "or other considerations having no possible connection with the duties of citizens as tax payers."

45 In the case of Rast v. Van Deman and Lewis, supra, however, the Supreme Court said:

"It is established that a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78. It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength. It is not within the competency of the courts to arbitrate in such contrariety. Chi., Burl. & Quincy R. R. v. McGuire, 219 U. S., 549; German Alliance Ins. Co. v. Kansas, 223 U. S. 389; 413, 414; Price v. Illinois, 238 U. S. 446, 452.

It is the duty and function of the legislature to discern and correct evils, and by evils we do not mean some definite injury, but obstacles to a greater public welfare. Eubank v. Richmond, 226, U. S. 137, 142; Sligh v. Kirkwood, 237 U. S. 52, 59. And, we repeat, 'it may make discriminations if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary.' Quong Wing v. Kirkendall, 223 U. S. 59, 62, and the cases cited above.

Of course an element to be considered is the authority of the legislature over the subject matter."

Plaintiff contends that "there are no existing distinctions which differentiate the business of plaintiffs from the business of making fish oil out of other fishes than herring, and that the business of making fish oil and fertilizer out of other fishes than herring is not taxed at all."

Now, not only is it "not inconceivable" that there is any basis for classification, but on the contrary to persons familiar with the fishing industry in Alaska a very probable basis for classification immediately suggests itself, and that is this: While the herring is a

food fish for man, yet so also is the salmon. It is a well-known fact that the salmon feeds largely on the herring (XXIV Encyclopædia Britannica, page 82, 2nd column, middle), and it is so easily conceivable as to be said to be probable that the legislature considered that the using of herring in large quantities for the manufacture of fish oil and fertilizer so depletes the food supply of what the legislature considered the more valuable and desirable
45½ "food for man" fish (that is, the salmon) as to seriously diminish the "run" of the latter. If so, that fact alone would constitute a sufficient basis for classification—240 U. S. 357 supra.

That there is a gross and patent inequality in the amount of the tax levied on this particular line of business as compared with the tax levied on other lines of business the allegations of the complaints if true do not permit of a doubt; but, nevertheless, all persons following this particular line of business are taxed alike, and if it cannot be said that the classification of the lines of business is wanting in a reasonable "basis of classification," and if that consideration be the decisive test, then it cannot be said that the Act is "so arbitrary as to constrain to the conclusion that it was not the exercise of classification but confiscation."

The legislature may itself choose the lines of business upon which it will levy the taxes, and it is not the function of the court to control its direction. (McCray v. U. S. supra.) The Legislature in its selection of objects to be taxed may favor some industries over others. In the case of Quong v. Kirkendall, 223 U. S. 62, the state of Montana laid a prohibitive tax on hand laundries. The "hand laundrymen" objected that they were being "taxed out of business" whereas there was no reasonable "basis for classification" by which their industry could be differentiated from steam laundries. The Court said:

"A state does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry."

True, the Court intimated that it had been assigned and successfully maintained that the legislation was "aimed at the Chinese" their ruling might have been different, but if so, in that event, the case would have been one of distinction made on account of color, race, nativity, etc., spoken of in Sugar Refining Co. v. Louisiana, 179 U. S. (supra).

46 It does not appear that the Act in question here is "so arbitrary as to constrain to the conclusion that it was not the exercise of the taxing power but a confiscation of property."

Counsel for plaintiff cites many cases to the effect that where a business is in itself lawful, the law-making power may not abolish that business or discriminate against it. As fairly typical of the cases so cited is the case of Connelly v. Union Sewer Pipe Co., 184 U. S. 541. In that case the exercise of the taxing power was not brought into question but rather a statute of the State of Illinois

providing that the combination of certain enterprises were "bad trusts" and that contracts with them were unenforceable—expressly providing also that the inhibition "shall not apply to agricultural products or live stock in the hands of the producer or raiser." The Court held that such a discrimination could not be sustained. On page 562, however, the Court expressly said:

"A state may, in its wisdom, classify property for purposes of taxation and the exercise of its discretion is not to be questioned in a court of the United States so long as the classification does not evade rights secured by the Constitution of the United States. But different considerations control when the State by legislation seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. * * * It is one thing to exert the power of taxation so as to meet the expenses of government and at the same time indirectly to build up or protect particular interests or industries. It is quite a different thing for the state under its general police power to enter the domain of trade or commerce and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce."

In Nicoll v. Ames, 173 U. S. 509, the Supreme Court says:

"The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive."

ROBERT W. JENNINGS,
Judge.

The demurrers will be sustained.

* * *

47 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793–A and 1816–A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Judgment.

This action having heretofore come on for hearing on March 26, 1919, the plaintiff appearing by its attorney, R. E. Robertson, Esq., and the defendant appearing by its attorney, George B. Grigsby, Esq.; and the said defendant having appeared and demurred to the

amended complaint of the plaintiff in cause No. 1793–A, and the said defendant having also appeared and demurred to the complaint of the plaintiff in cause No. 1816–A; and at said time the said parties, by their said counsel, having orally agreed and stipulated in open court, that said two causes should be consolidated and should thereafter be considered as though both of said actions had been brought in one action, and the defendant, by his counsel, having thereupon in open court expressly waived all contention and objection that plaintiff's said pleadings were insufficient in respect to their allegations of duress or that there was a defect of parties plaintiff or defendant, or that said pleadings were insufficient in any respect other than in their allegations as to the unconstitutionality of the territorial acts, and the taxes levied thereby, involved in said actions, as so consolidated into one action; and thereupon argument having been duly had on said demurrers of said defendant to plaintiff's said pleadings, and said argument having been continued from day to day until March 29, 1919, on which said date the Court took the same under advisement; and thereafter and on June 7, 1919,
48 the Court being fully advised in the premises delivered in open Court his written opinion or "ruling on demurrers to complaints," sustaining said demurrers to plaintiff's said pleadings.

Now, on motion of George B. Grigsby, attorney for the defendant herein:

It is ordered, adjudged and decreed that the defendant's demurrers to plaintiff's said pleadings be, and the same are hereby, sustained; and plaintiff electing to stand on the record,

It is further ordered, adjudged and decreed that plaintiff's amended complaint in said action No. 1793–A, now consolidated with said action No. 1816–A, be and the same is hereby dismissed; and

It is further ordered, adjudged and decreed that plaintiff's complaint in said action No. 1816–A, now consolidated with said action No. 1793–A, be and the same is hereby dismissed; and

It is further ordered, adjudged and decreed that the defendant have and recover of the plaintiff his costs and disbursements herein to be taxed.

Done in open court this 18th day of June, 1919.

ROBERT W. JENNINGS,
District Judge.

To which Judgment and Ruling of the Court, the plaintiff excepts, and its exception is hereby allowed.

ROBERT W. JENNINGS,
District Judge.

O. K.

G. B. GRIGSBY.

Entered Court Journal, No. P- Page 104–5.

Filed in the District Court, District of Alaska, First Division, Jun- 18, 1919.

J. W. BELL,
Clerk.
By JOHN T. REED,
Deputy.

49 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793–A and 1816–A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Assignment of Errors.

Comes now the Alaska Fish Salting and By-Products Company, a corporation, the plaintiff in the above entitled action, and assigns the following errors as having been committed by the Court herein upon which it relies, and will rely, upon its appeal from the judgment made and entered by the above entitled Court on the 16th day of June, 1919, towit:

1. The Court erred in sustaining defendant's demurrer to plaintiff's amended complaint in action No. 1793–A, now consolidated with action No. 1816–A, for the reason that plaintiff's said amended complaint states a cause of action and the said Alaska Territorial Acts, towit: Chapter 52, Alaska Session Laws 1913, approved May 1, 1913, Chapter 76, Alaska Session Laws 1915, approved April 29, 1915, and Chapter 74, Alaska Session Laws 1917, approved May 3, 1917, and particularly Section One, Tenth Sub-section of said Chapter 74, Alaska Session Laws 1917, and the license taxes thereby levied and assessed upon plaintiff's business of manufacturing, from herring in whole or in part, fish oil, fertilizer and fish meal, are contrary to the Constitution of the United States, and particularly to the Fifth and Fourteenth Amendments thereof, and are contrary to the Organic Act of the Territory of Alaska, which is the Act passed by the Congress of the United States on August 24, 1912, and entitled: "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," and its amendments.

2. The Court erred in dismissing plaintiff's amended complaint in cause No. 1793–A, now consolidated with action No. 1816–A, for the same reason.

3. The Court erred in sustaining defendant's demurrer to plaintiff's complaint in cause No. 1816–A, now consolidated with action

No. 1793–A, for the reason that plaintiff's said complaint states a cause of action and the said Alaska Territorial Acts, to-wit: Chapter 52, Alaska Session Laws 1913, approved May 1, 1913, Chapter 76, Alaska Session Laws 1915, approved April 29, 1915, and Chapter 74, Alaska Session Laws, 1917, approved May 3, 1917, and particularly Section One, Tenth Sub-section of said Chapter 74, Alaska Session Laws 1917, and the license taxes thereby levied and assessed upon plaintiff's business of manufacturing, from herring in whole or in part, fish oil, fertilizer and fish meal, are contrary to the Constitution of the United States, and particularly to the Fifth and Fourteenth Amendments thereof, and are contrary to the Organic Act of the Territory of Alaska, which is the Act passed by the Congress of the United States on August 24, 1912, and entitled: "An Act to create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes," and its amendments.

4. The Court erred in dismissing plaintiff's complaint in cause No. 1816-A, now consolidated with action No. 1793-A, for the same reason.

5. The Court erred in denying plaintiff's motion for judgment, for the reasons as hereinabove stated.

6. The Court ered in not entering judgment for plaintiff and against defendant for $10,298.00, with interest at 8% from January 14, 1918, for the reasons as hereinabove stated.

7. The Court erred in not entering judgment for plaintiff and against defendant for $6,730.00, with interest at 8% from January 15, 1919, for the reasons as hereinbefore stated.

8. The Court erred in rendering its said judgment against the plaintiff, for the reasons as hereinabove stated.

S. E. ROBERTSON,
Attorney for Plaintiff.

Copy of the within Assignment of Errors received this 17th day of June, 1919.

GEO. B. GRIGSBY,
Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division, Jun. 18, 1919.

J. W. BELL,
Clerk.
By JOHN T. REED,
Deputy.

51 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Petition for Writ of Error.

To the Honorable Robert W. Jennings, Judge of the District Court for the District of Alaska:

Comes now the Alaska Fish Salting and By-Products Company, plaintiff herein, by its attorney, R. E. Robertson, Esquire, and complaining that in the record and proceedings had in said above entitled cause, and also in the rendition of the Judgment in the said above entitled cause in the District Court for the District of Alaska, Division Number One, against the said above named plaintiff on the 16th day of June, 1919, wherein said Court ordered and adjudged that the defendant's demurrers to plaintiff's amended complaint in said cause No. 1793-A, now consolidated with cause No. 1816-A, and to the plaintiff's complaint in said cause No. 1816-A, now consolidated with said cause No. 1793-A, be sustained, and that the plaintiff's said pleadings be dismissed, and that defendant have judgment against the plaintiff, manifest error hath happened to the great damage of said plaintiff, as will more fully appear from the Assignment of Errors filed herewith.

Wherefore the plaintiff prays for the allowance of a Writ of Error for the correction of the errors complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, and such other orders and process as may
52 cause the said errors to be corrected, be sent to the United States Supreme Court.

Dated this 17th day of June, 1919.

R. E. ROBERTSON,
Attorney for Plaintiff.

Order.

Now, on this day, the foregoing Petition coming on regularly for hearing,

It is ordered that the same be and it is hereby allowed.

Done in open court this 18th day of June, 1919.

ROBERT W. JENNINGS,
Judge of District Court for the District of Alaska, Division Number One.

Copy of the foregoing Petition for Writ or Error received this 17th day of June, 1919.

GEO B. GRIGSBY,
Attorney for Defendant.
D. B. C.

Filed in the District Court, District of Alaska, First Division, Jun. 18, 1919.

J. W. BELL,
Clerk.
By JOHN T. REED,
Deputy.

53 Filed June 18, 1919. Docket 4171. U. S. Marshal.

In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Robert W. Jennings, Judge of the District Court for the District of Alaska, Division Number One, Greeting:

Because in the record and proceedings as also in the rendition of the Judgment of a plea in the said District Court, Division Number One thereof, before you, between the Alaska Fish Salting and By-Products Company, a corporation, plaintiff and plaintiff in error, and Walstein G. Smith, defendant and defendant in error, a manifest error hath happened to the great damage of the said plaintiff as set forth and appears by the Petition herein as well as shown by the Assignment of Errors,

We being willing that error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record, th Assignment of Errors and all the proceedings aforesaid, together with all things concerning the same, to the Honorable, the Justices of the United States Supreme Court, in the City of Washington, in the District of Columbia, together with this Writ, so as to have the same at the said place and said Court on or before sixty days from the date hereof, that the record and proceedings aforesaid, being

inspected, the said Supreme Court of the United States may
54 cause further to be done therein to correct those errors, *which* of right and according to the laws and customs of the United States, ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of the District Court for Alaska this 18th day of June, 1919.

[Seal District Court for the District of Alaska, Div. No. 1.]

JNO. BELL,
Clerk of the District Court for the District of Alaska, Division Number One,
By JOHN T. REED,
Deputy.

Said Writ is by me allowed this 18th day of June, 1919.
ROBERT W. JENNINGS,
Judge of the District Court for the District of Alaska, Division Number One.

Entered Court Journal, No. P, Page 102.

55 UNITED STATES OF AMERICA,
District of Alaska,
Division No. 1, ss:

I, J. M. Tanner, United States Marshal for the First Division District of Alaska, do hereby certify that I received the writ of Error attached hereto on the 18th day of June 1919 at Juneau Alaska, and that I served the same on the 18th day of June 1919 at Juneau Alaska, by delivering to and leaving with the within named defendant W. G. Smith, a copy hereof, certified to by J. W. Bell Clerk of the United States District Court for the First Division District of Alaska.

Dated at Juneau Alaska this 18th day of June 1919
J. M. TANNER,
U. S. Marshal,
By C. H. PASSELLS,
Office Deputy.

Marshal's fees serving writ $3.00.

56 Filed in the District Court, District of Alaska, First Division, Jun. 18, 1919.

J. W. BELL,
Clerk,
By THOS. REED,
Deputy.

57 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Bond on Writ of Error.

Know all men by these presents, That we, Alaska Fish Salting and By-Products Company, a corporation, as principal, and the United States Fidelity and Guaranty Company, a corporation, as surety, are held and firmly bound unto Walstein G. Smith, in the sum of Two Hundred and Fifty ($250.00) Dollars, to be paid to the said Walstein G. Smith, his heirs, executors and administrators, for which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 17th day of June, 1919.

Whereas, lately at the session of the District Court for the District of Alaska, Division Number One, at Juneau, in the above entitled action, Nos. 1793-A and 1816-A, consolidated, pending in said Court wherein the said Alaska Fish Salting and By-Products Company, a corporation, is plaintiff and plaintiff in error, and said Walstein G. Smith is defendant and defendant in error, a judgment was rendered against the said plaintiff on the 16th day of June, 1919, as more fully appears in said judgment, wherein and whereby said Court sustained defendant's demurrers to plaintiff's amended complaint in said action No. 1793-A, and to plaintiff's complaint
58 in said action No. 1816-A, which two actions are now consolidated, and whereas the said plaintiff in error has sued out a Writ of Error to the Honorable, the United States Supreme Court, to reverse the said judgment, and a Citation has been duly issued thereon, directed to the said defendant and defendant in error, and admonishing him to be and appear in the United States Supreme Court, to be holden in the City of Washington, District of Columbia.

Now, the condition of the above obligation is such, that if the said Alaska Fish Salting and By-Products Company, a corporation, shall prosecute said Writ of Error to effect and shall answer all damages

and costs, if it fail to make its plea good, then this obligation to be void; otherwise, to remain in full force and effect.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY,
A CORPORATION,
By R. E. ROBERTSON,
Its Attorney and Agent,
Plaintiff and Plaintiff in Error.

UNITED STATES FIDELITY AND GUARANTY COMPANY,
A CORPORATION,
[SEAL.] By R. E. ROBERTSON,
Its Attorney-in-Fact and Agent,
Surety.

Acknowledged before me this 17th day of June, 1919.
GUY McNAUGHTON,
[SEAL.] *Notary Public for Alaska.*

My commission expires Oct. 24, 1920.

59 UNITED STATES OF AMERICA,
Territory of Alaska, ss:

R. E. Robertson, being first duly sworn on oath, deposes and says: That he is Attorney-in-fact and General Agent for Alaska for the United States Fidelity and Guaranty Company, a corporation, which is incorporated under the laws of the State of Maryland and duly authorized to engage in the writing of surety bonds in the Territory of Alaska; that affiant is informed and believes and, therefore, alleges that said surety company is worth more than the sum of Five Hundred ($500.00) Dollars, exclusive of property exempt from execution, and over and above all its just debts and its liabilities, and is acceptable by the United States as surety on bonds, the penalty of which bonds is many times more than Five Hundred ($500.00) Dollars.

R. E. ROBERTSON.

Subscribed and sworn to before me this 18th day of June, 1919.
GUY McNAUGHTON,
[SEAL.] *Notary Public for Alaska.*

My commission expires Oct. 24th, 1920.

Sufficiency of sureties on the foregoing bond approved this 18th day of June, 1919.

ROBERT W. JENNINGS,
District Judge.

(Endorsed:) Nos. 1793-A and 1816-A. Con. Alaska Fish Salting and By-Products Co, a corp., plaintiff, vs. Walstein C. Smith,

defendant. Bond on Writ of Error. Filed in the District Court, District of Alaska, First Division, June 18, 1919. J. W. Bell, Clerk, by John T. Reed, Deputy. R. E. Robertson, attorney at law, Suite 200, Seward Building, Juneau, Alaska.

60 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff and Plaintiff in Error,

vs.

WALSTEIN G. SMITH, Defendant and Defendant in Error.

Bill of Exceptions.

Be it remembered, that this matter came regularly on for hearing on the 26th day of March, 1919, on defendant's demurrer to plaintoff's amended complaint in cause No. 1793-A, now consolidated with cause No. 1816-A, and on defendant's demurrer to plaintiff's complaint in cause No. 1816-A, now consolidated with cause No. 1793-A, by which said demurrers defendant demurred to plaintiff's said pleadings on the grounds (1) that there is a defect of parties defendant, and (2) that plaintiff's said pleadings do not state facts sufficient to constitute a cause of action; and thereupon the parties by their respective counsel stipulating in open court that said demurrers should be heard together and that said causes of action should be consolidated, and the defendant by his counsel thereupon expressly waiving all contention and objection that plaintiff's said peladings were insufficient in respect to their allegations of duress or that there was a defect of parties plaintiff or defendant, or that said pleadings were insufficient in any respect other than in their allegations as to the unconstitutionality of the Territorial Acts, and the validity of the taxes levied thereby and involved in said action, and the said matter having been duly argued by respective counsel at hearings continued from day to day until March 29, 1919, at which time the said matter was submitted to the Court, who thereupon took the same under advisement.

And thereafter and on June 7, 1919, the said Court hav-
61 ing rendered his written opinion or "ruling on demurrers to complaints," which is on file in the office of the Clerk of the District Court for the District of Alaska, Division Number One, at Juneau; to which opinion or ruling plaintiff duly excepted and an exception was allowed;

And thereafter and on June 16, 1919, the plaintiff having made and filed his motion for judgment, notwithstanding the said opinion of the court, which motion, in words and figures, is as follows:

"In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Motion.

Comes now the above named plaintiff, by its attorney, and, notwithstanding the written opinion or ruling of the Court herein, respectfully moves the Court that judgment be entered herein in favor of the plaintiff and against the defendant, and particularly that said judgment be entered in favor of the plaintiff and against the defendant, as follows:

1. For the sum of $10,298.00, with interest at the rate of 8% per annum from January 14, 1918.

2. For the sum of $6,730.00, with interest at the rate of 8% per annum from January 15, 1919.

3. For plaintiff's costs and disbursements herein incurred.

This motion is based on the records and files herein.

Respectfully submitted, R. E. ROBERTSON,
Attorney for Plaintiff."

And thereafter and on said day, the Court having denied plaintiff's said motion, as more fully appears by the order of said Court made and entered on said day, which is in words and figures as follows:

"In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Order.

Now, on this day, the above entitled motion coming regu-
62 larly on for hearing, and the Court being fully advised in the premises,

It is ordered that said motion be and the same is hereby denied; to which ruling of the Court the plaintiff excepts and its exception is allowed.

Done in open court this 18th day of June, 1919.

ROBERT W. JENNINGS,
District Judge."

To which ruling of the Court, plaintiff duly excepted and an exception was allowed:

And thereafter and on June 16th, 1919, the plaintiff having elected to stand on the record, the Court made and entered its judgment herein, which in words and figures is as follows:

"In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Judgment.

This action having heretofore come on for hearing on March 26, 1919, the plaintiff appearing by its attorney, R. E. Robertson, Esq., and the defendant appearing by its attorney, George B. Grigsby, Esq.; and the said defendant having appeared and demurred to the amended complaint of the plaintiff in cause No. 1793-A, and the said defendant having also appeared and demurred to the complaint of the plaintiff in cause No. 1816-A; and at said time the said parties, by their said counsel, having orally agreed and stipulated, in open court, that said two causes should be consolidated and should thereafter be considered as though both of said actions had been brought in one action, and the defendant, by his counsel, having thereupon in open court expressly waived all contention and objection that plaintiff's said pleadings were insufficient in respect to their allegations of duress or that there was a defect of parties plaintiff or defendant, or that said pleadings were insufficient in any respect other than in their allegations as to the unconstitutionality of the territorial acts, and the taxes levied thereby, involved in said actions, as so consolidated into one action; and thereupon argument having been duly had on said demurrers of said defendant to plaintiff's said pleadings, and said argument having been continued from day to day until March 29, 1919, on which said date the Court took the same under advisement; and thereafter and on June 7, 1919, the

Court being fully advised in the premises delivered in open court his written opinion or "ruling on demurrers to complaints," sustaining said demurrers to plaintiff's said pleadings.

Now, on motion of George B. Grigsby, attorney for the defendant herein:

It is ordered, adjudged and decreed that the defendant's demurrers to plaintiff's said pleadings be, and the same are hereby, sustained; and the plaintiff electing to stand on the record,

63 It is further ordered, adjudged and decreed that plaintiff's amended complaint in said action No. 1793-A, now consolidated with said action No. 1816-A, be and the same is hereby dismissed; and

It is further ordered, adjudged and decreed that plaintiff's complaint in said action No. 1816-A, now consolidated with said action No. 1793-A, be and the same is hereby dismissed; and

It is further ordered, adjudged and decreed that the defendant have and recover of the plaintiff his costs and disbursements herein to be taxed.

Done in open court this 16th day of June, 1919.

ROBERT W. JENNINGS,
District Judge.

To which ruling and judgment of the Court, plaintiff duly excepted and an exception was allowed.

Order Settling Bill of Exceptions.

And now this matter coming on to be heard on the motion of the plaintiff, by its attorney, requesting that the above and foregoing be signed, settled and allowed as a bill of exceptions and made a part of the record herein,

I, Robert W. Jennings, Judge of the District Court for the District of Alaska, Division Number One, being the Judge before whom said cause was tried and said proceedings had, do hereby sign, settle and allow the same as a full, true and correct bill of exceptions herein, and order that the same be filed and made a part of the record herein; and I do further certify that said Bill of Exceptions was filed, presented, settled and signed within the time allowed by law and the rules and practice of this Court.

Done in open Court this 18th day of June, 1919.

ROBERT W. JENNINGS,
Judge of the District Court.

Entered Court Journal No. P, Page 102.

Copy of the foregoing Bill of Exceptions and Order received June 17, 1919.

GEO. B. GRIGSBY,
Attorney for Defendant.
D. B. C.

Filed in the District Court, District of Alaska, First Division, Jun. 18, 1919.

J. W. BELL,
Clerk,
By JOHN T. REED,
Deputy.

Filed June 18, 1919. Civil Docket 4171. ——— ———, U. S. Marshal.

64 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793–A and 1816–A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff and Plaintiff in Error,

vs.

WALSTEIN G. SMITH, Defendant and Defendant in Error.

Citation on Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Walstein G. Smith, the above named defendant and defendant in error, and to George B. Grigsby, Esquire, his attorney, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, to be held in the city of Washington, in the District of Columbia, within sixty days from the date of this citation, pursuant to Writ of Error filed in the office of the Clerk of the District Court for the District of Alaska, Division Number One thereof, at Juneau, wherein the above named Alaska Fish Salting and By-Products Company, a corporation, is plaintiff and plaintiff in error, and you, Walstein G. Smith, are defendant and defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States of America, this 18th day of June, A. D. 1919.

ROBERT W. JENNINGS,
Judge of the District Court for the District of Alaska, Division Number One, at Juneau.

Attest:

[District Court for the District of Alaska, Div. No. 1.]

J. W. BELL,
Clerk of the District Court for the
District of Alaska, Division
Number One, at Juneau,
By JOHN T. REED,
Deputy.

65 UNITED STATES OF AMERICA,
District of Alaska,
Division No. 1, ss:

I, J. M. Tanner, United States Marshal for the First Division District of Alaska, do hereby certify that I received the Citation on Writ of Error attached hereto on the 18th day of June, 1919, at Juneau, Alaska, and that I served the same on the 18th day of June, 1919, at Juneau, Alaska, by delivering to and leaving with the within named defendant W. G. Smith a copy hereof, certified to by J. W. Bell Clerk of the United States District Court for the First Division District of Alaska.

Dated at Juneau Alaska this 18th day of June 1919.

J. M. TANNER,
U. S. Marshal,
By C. H. PASSELLS,
Office Deputy.

Marshal's fees, serving writ $3.00.

66 Filed in the District Court, District of Alaska, First Division, Jun- 18, 1919. J. W. Bell, Clerk, By C. Z. Demul, Deputy.

67 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff and Plaintiff in Error,

vs.

WALSTEIN G. SMITH, Defendant and Defendant in Error.

Prayer for Reversal.

To the Honorable The Supreme Court of the United States:

Now comes the Alaska Fish Salting ant By-Products Company, a corporation, the above named plaintiff and plaintiff in error, by its attorney, R. E. Robertson, Esq., and respectfully prays for a re-

versal of the judgment of the District Court for the District of Alaska, Division Number One, at Juneau, made and entered by said Court on the 16th day of June, 1919, in that certain action pending in said Court, entitled: "Nos. 1793–A and 1816–A, consolidated, Alaska Fish Salting and By-Products Company, a corporation, plaintiff and plaintiff in error, versus Walstein G. Smith, defendant and defendant in error."

R. E. ROBERTSON,
Attorney for Alaska Fish Salting and By-Products Company, a Corporation.

Copy of the foregoing Prayer for Reversal received this 17th day of June, 1919.

GEORGE B. GRIGSBY,
Attorney for Defendant.
D. B. C.

68 Filed in the District Court, District of Alaska, First Division, Jun- 18, 1919. J. W. Bell, Clerk, By John T. Reed, Deputy.

69 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793–A and 1816–A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff and Plaintiff in Error,

vs.

WALSTEIN G. SMITH, Defendant and Defendant in Error.

Praecipe for Transcript on Appeal.

To the Clerk of the District Court for the District of Alaska, Division Number One, Juneau, Alaska.

SIR:

Please prepare the transcript of the record in the above entitled case on Writ of Error and authenticate and certify the following papers, towit:

1. Amended complaint in action No. 1793–A, now consolidated with action No. 1816–A.

2. Stipulation between the counsel for the respective parties in action No. 1793–A, now consolidated with action No. 1816–A, dated March 21, 1919, and filed March 22, 1919.

3. Demurrer, in action No. 1793–A, now consolidated with action No. 1816–A.

4. Complaint in action No. 1816–A, now consolidated with action No. 1793–A.

5. Demurrer in action No. 1816–A, now consolidated with action No. 1793–A.

6. Minute entries of hearings on demurrer, Civil Journal "O", pages 462, 467 and 468.

7. Opinion or "ruling on demurrer to complaints."

8. Judgment.

9. Assignment of Errors.

10. Petition for Writ of Error, and Order allowing same.

11. Writ of Error.

12. Bond on Writ of Error.

70 13. Bill of Exceptions, and Order allowing and settling same.

14. Citation on Writ of Error.

15. Prayer for Reversal.

16. This Præcipe.

When so prepared, authenticated and certified, you will kindly transmit said record to the Clerk of the Honorable the United States Supreme Court, in the City of Washington, District of Columbia.

Dated at Juneau, Alaska, June 18th, 1919.

R. E. ROBERTSON,
Attorney for Plaintiff and Plaintiff in Error.

Copy of the within Præcipe received this 17th day of June, 1919.

GEO. B. GRIGSBY,
Attorney for Defendant.
D. B. C.

71 Filed in the District Court, District of Alaska, First Division, June 18, 1919.

J. W. BELL,
Clerk.
By JOHN T. REED,
Deputy.

72 In the District Court for the District of Alaska, Division Number One, at Juneau.

Nos. 1793-A and 1816-A, Consolidated.

ALASKA FISH SALTING AND BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Certificate of the Clerk of the District Court to Transcript of Record.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that the foregoing and hereto attached seventy-one pages of typewritten matter, numbered from one to seventy-one, both numbers inclusive, constitute a full, true and correct copy of the record and the whole thereof, prepared in accordance with the praecipe, of the plaintiff and plaintiff in error, filed herein and made a part hereof, in cases No. 1793-A and No. 1816-A, consolidated into cause No. 1793-A and 1816-A, entitled, "Nos. 1793-A and 1816-A, Consolidated. Alaska Fish Salting and By-Products Company, a corporation, Plaintiff and Plaintiff in Error, vs. Walstein G. Smith, Defendant and Defendant in Error."

I do further certify that the said record is by virtue of the Writ of Error and Citation in this cause, and the Return thereof in accordance therewith.

I do further certify that the said record has been prepared, authenticated and certified to by me in my office, and the cost of preparation, authentication, examination and certificate, amounting to Twenty-nine and 25/100 Dollars, has been paid to me by R. E. Robertson, Esquire, counsel for said plaintiff and plaintiff in error.

73 In Witness Whereof I have hereunto set my hand and affixed the seal of the above entitled Court this 5th day of July, 1919.

[Seal District Court for the District of Alaska, Div. No. 1.]

J. W. BELL,
Clerk of the District Court for the District of Alaska, Number One.

Endorsed on cover: File No. 27,259. Alaska District Court, Division No. 1. Term No. 504. Alaska Fish Salting and By-Products Company, pelintiff in error, vs. Walstein G. Smith. Filed August 21st, 1919. File No. 27,259.

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1793-A.

ALASKA FISH SALTING & BY-PRODUCTS COMPANY, a Corporation, Plaintiff,

vs.

WALSTEIN G. SMITH, Defendant.

Certificate of Correction.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division Number One, do hereby certify that, upon examination of the printed Transcript of Record of the above-entitled case, as the same appears in No. 504, October Term, 1919, Supreme Court of the United States, I find that Paragraph VI, of the amended Complaint in the above-entitled action, as the same appears on Pages 4 and 5, of said Record, is not in accord with Paragraph VI, of the original amended Complaint in said action, as the same appears on file in my office, and that this is due to certain inadvertences arising in, or shortly prior to, the preparation of the Transcript of Record in the above-entitled action as certified to by me under date of July 5, 1919; and I hereby further certify that the following is a true, full and correct copy of Paragraph VI, of the amended Complaint in the above-entitled action, as the same appears of record and on file in my office, to wit:

"That said acts of said legislature and particularly that portion of said Chapter 74, Alaska Session Laws 1917, i. e., Section 1, 10th Subsection thereof, levying said license tax upon fish oil, fertilizer and fish meal manufactured from herring either in whole or in part, while ostensibly enacted solely as revenue measures, were in fact enacted for the purpose of prohibiting and restraining, under the guise of a revenue measure, this plaintiff from continuing in its said business and industry, and to abolish plaintiff's said business and to confiscate its property; and that said acts and particularly said sections thereof imposing said tax on fish oil, fertilizer and fish meal manufactured from herring in whole or in part will not produce any revenue for the reason that said tax is so exorbitant, unfair, unreasonable, extortionate, confiscatory and prohibitive that, if said acts and particularly said sections thereof be annually enforced, it will entirely prohibit plaintiff and all others from engaging in the manufacture of fish oil, fertilizer and fish meal from herring either in whole or in part; and that neither said Chapter 74, Alaska Session Laws, 1917, Chapter 76, Alaska Session Laws, 1915, nor Chapter 52, Alaska Session Laws, 1913, provides any regulation whatsoever for the business of manufacturing fish oil, fish meal and fer-

tilizer from herring either in whole or in part, in the Terri
Alaska, and that said tax is greatly in excess of the reasonal
necessary cost of any license or regulation whatsoever tha
reasonably be required to be exercised over said business or in
and that the cost of regulating and supervising, and of issu
censes for, said business and industry is and would be and h
no greater than that of any of the other businesses or indust
which licenses are provided in said acts, but that plaintif
industry is arbitrarily, capriciously and unjustly taxed many
more than, i. e., a percentage many times larger than that
on, any other business in the Territory, and that said Territo
and had, no authority or power under its police power, eith
plied or otherwise, to impose said tax of $2.00 per barrel on
manufactured from herring either in whole or in part, or $2
ton on fertilizer and fish meal, manufactured from herring
in whole or in part, as a police or other regulation on said b
and industry; and that as a matter of fact no regulation or
supervision whatsoever over said business or industry is requ
needed or furnished therefor or thereto by said Territory;"

In witness whereof, I have hereunto set my hand and affi
seal of the District Court for the District of Alaska, this 5th
March, 1920.

[Seal District Court for the District of Alaska, Div. No.

J. W. BELL,
Clerk of the District C

[Endorsed.]

File No. 27,259. Supreme Court U. S., October Term
Term No. 504. Alaska Fish Salting & By-Products Co.,
Error, vs. Walstein G. Smith. Certificate of Clerk of U. S.
Court as to correction of transcript of record. Filed March 17

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